



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



Liberty Hill Camping Area
Attn: Helen Tapley
P.O. Box 298
Greenland, NH 03840

Re: Liberty Hill Camping Area
Greenland, NH
EPA # 0987010

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 02-036**

October 10, 2002

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Helen Tapley, pursuant to RSA 485:58 and Env-C 601.05. The Division is proposing that fines totaling \$7,100 be imposed against Helen Tapley for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Helen Tapley is an individual having a mailing address of Liberty Hill Camping Area, Box 298, Greenland, NH 03840.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 485 authorizes DES to regulate public water supplies. RSA 485:3 authorizes the Commissioner to adopt drinking water rules which identify contaminants which may have an adverse affect on health, establish maximum contaminant levels (MCLs) that are acceptable in water for human consumption, establish criteria for procedures to assure compliance with MCLs, and identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, the Commissioner has adopted Env-Ws 300.
2. RSA 485:58, IV authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$2,000 per offense for violations of RSA 485 or any rule adopted pursuant thereto, and to establish a schedule of fines for such violations. Pursuant to this authority, the Commissioner has adopted Env-C 602 to establish the schedule of fines for violations of RSA 485 and rules adopted pursuant thereto.
3. Helen Tapley is the owner of Liberty Hill Camping Area water system which serves a campground containing 50 campsites, a bath house, and apartments located in the community of Greenland, NH ("Water System"). The Water System is a transient, non-community water system as defined in NH RSA 485:1-a, X and NH Admin. Rule Env-Ws 302.02 (ca).

A. BACTERIA MONITORING

4. NH Admin. Rule Env-Ws 315.01 requires transient, non-community water systems to monitor for bacteria in accordance with a schedule based on the population served by the system.
5. NH Admin. Rule Env-Ws 325.05 requires transient, non-community water systems serving less than 1,000 people to submit a minimum of one sample during each calendar quarter that the system provides water to the public to test for the presence of total coliform bacteria.
6. The Water System is routinely required to collect bacteria samples in the months of April, May, June, and July.
7. DES issued Administrative Order WD 98-18 ("Order") on December 11, 1998, for the Water System's failure to submit water samples for total coliform analysis in July 1994, April 1995, May 1995, June 1995, April 1996, May 1996, July 1996, April 1997, May 1997, June 1997, and July 1997. The Order required the Water System to:
 - a. Submit a total coliform sample to a laboratory certified to perform total coliform analysis during the system's scheduled sampling months of April, May, June, and July;
 - b. For the first month the water system is open to the public during the 1999 camping season, post notice to water consumers of the failure to sample for total coliform in June 1995, April 1996, May 1996, July 1996, April 1997, May 1997, June 1997 and July 1997; and
 - c. Within ten days after completion of the public notice required above, provide proof of the public notice by sending a copy of the notice to DES along with a letter stating when, where, and by whom public notice was posted.
8. The Water System received the Order on or about December 16, 1998, as evidenced by the signed postal receipt.
9. The Water System corrected the violations identified in the Order and DES released the Order on September 28, 2001.
10. The Water System submitted all routine bacteria samples for the scheduled months of April 1998, May 1998, June 1998, and July 1998.
11. The Water System failed to submit samples for bacterial analysis to a state laboratory or a state-certified laboratory during the system's scheduled months of April 1999, May 1999, July 2000, May 2001, June 2001, and July 2001.
12. On August 24, 2001, DES personnel met with Mrs. Tapley at Liberty Hill Campground to conduct a routine sanitary survey. While conducting the sanitary survey, DES staff discussed with Mrs. Tapley bacteria monitoring requirements and the need to post public notice and submit proof of public notice for drinking water violations. At that time, Mrs. Tapley presented to DES staff three separate water samples for bacterial analysis intended to be for the sampling months of May, June, and July. Staff explained that the samples could not be accepted for analysis because a

routine bacteria water sample must be collected and analyzed during the system's scheduled sampling month to ensure an accurate representation of water quality during a particular sampling month. Public notice for drinking water violations incurred in 2000 and 2001 was posted.

13. The Water System failed to submit samples for bacterial analysis to the state laboratory or a state-certified laboratory during the system's scheduled months of April 2002, May 2002, June 2002, and July 2002.

14. On August 15, 2002, DES received a telephone call from a staff member from Advanced Pump and Filter. The Water System had submitted to Advanced Pump and Filter three separate water samples for bacterial analysis intended to represent the sampling months of June, July, and August. Because the Water System had not submitted a water sample for bacterial analysis in 2002, DES staff instructed Advanced Pump and Filter to analyze one sample only for bacteria and reject the other two samples because they were submitted too late to be accepted as the June and July samples.

15. Env-C 602.03 establishes administrative fines for violations of monitoring, reporting, and compliance requirements. For failure to submit required water samples or sample data for bacterial analysis as required by Env-Ws 325.01 through Env-Ws 325.15, a fine of \$100 per sample for the first violation within each federal fiscal year and \$200 per sample for each subsequent violation within that federal fiscal year is authorized.

16. Env-C 602.01(b) defines "federal fiscal year", for purposes of water supply issues, as the time interval from October 1 through the following September 30.

B. NITRATE MONITORING

17. Env-Ws 326.30 requires all transient, non-community water systems to submit an annual nitrate sample.

18. Env-Ws 321.09 requires all water systems to monitor at the time designated by the department within each compliance period in accordance with the system's sampling schedule.

19. The Water System is required to submit a nitrate sample for analysis anytime during the second calendar quarter (April, May, and June).

20. The Water System failed to submit a nitrate sample for analysis during the second calendar quarter of 2002.

21. NH Admin. Rule Env-C 602.03 establishes administrative fines for violations of monitoring, reporting, and compliance requirements. For failure to submit required water samples or sample data for nitrate analysis as required by Env-Ws 326.30 through Env-Ws 326.33, a fine of \$100 per sample for the first violation within each federal fiscal year and \$200 per sample for each subsequent violation within that federal fiscal year is authorized.

C. NITRITE MONITORING

22. Env-Ws 326.35 requires all transient, non-community water systems to monitor for nitrite per compliance period.
23. Env-Ws 302.02(k) defines "compliance period" as a three-year calendar period.
24. Env-Ws 321.09 requires all public water systems to monitor at the time designated by DES within each compliance period. The Water System was designated to sample for nitrite during the second quarter of 2002 for the 2000 - 2002 compliance period.
25. The Water System failed to submit a nitrite sample during the 2nd quarter of 2002, and to date, has not submitted a nitrite sample during the 2000 - 2002 compliance period.
26. NH Admin. Rule Env-C 602.03 establishes administrative fines for violations of monitoring, reporting, and compliance requirements. For failure to submit required water samples or sample data for nitrite analysis as required by Env-Ws 326.35 a fine of \$100 per sample for the first violation within each federal fiscal year and \$200 per sample for each subsequent violation within that federal fiscal year is authorized.

D. PUBLIC NOTIFICATION

27. Prior to January 1, 2002, NH Admin. Rule Env-Ws 351.01 required a water system that failed to submit any of the routine bacteria samples as required by Env-Ws 325 to notify persons served by the system within 21 days of the failure to sample. Within 30 days of the failure to sample, the water system was required to provide proof of public notice to the Division.
28. As of January 1, 2002, NH Admin. Rule 351.01 requires a water system that fails to submit any of the routine bacteria samples as required by Env-Ws 325 to notify persons served by the system within 30 days of the failure to sample. Within 10 days of providing public notice, the water system must provide proof of public notice to the Division.
29. The Division issued the Water System a Notice of Violation ("Notice of Violation") dated May 31, 2002, for the failure to monitor for bacteria in the April 2002 sampling month. The Notice of Violation requested that the Water System post public notice stating that the April 2002 sampling had not been performed and submit proof of public notice to the Division. Enclosed with the Notice of Violation was the public notice language to be used and instructions for posting public notice.
30. The Water System failed to submit proof of public notice to the Division for the failure to monitor for bacteria in the April 2002 sampling month.
31. The Division issued the Water System a Notice of Violation dated June 27, 2002, for the failure to monitor for bacteria in the May 2002 sampling month. The Notice of Violation requested that the Water System post public notice stating that the May 2002 sampling had not been performed and submit proof of public notice to the Division. Enclosed with the Notice of Violation was the public notice language to be used and instructions for posting public notice.

32. The Water System failed to submit proof of public notice to the Division for the failure to monitor for bacteria in the May 2002 sampling month.
33. The Division issued the Water System a Notice of Violation dated July 26, 2002, for the failure to monitor for bacteria in the June 2002 sampling month. The letter requested that the Water System post public notice stating that the June 2002 sampling had not been performed and submit proof of public notice to the Division. Enclosed with the Notice of Violation was the public notice language to be used and instructions for posting public notice.
34. The Water System failed to submit proof of public notice to the Division for the failure to monitor for bacteria in the June 2002 sampling month.
35. The Division issued the Water System a Notice of Violation dated August 13, 2002, for the failure to monitor for nitrate and nitrite in the second quarter of 2002. The Notice of Violation requested that the Water System post public notice stating that the second quarter sampling had not been performed and to submit proof of public notice to the Division. Enclosed with the Notice of Violation was the public notice language to be used and instructions for posting public notice.
36. The Water System failed to submit proof of public notice to the Division for the failure to monitor for nitrate and nitrite during the second quarter of 2002.
37. Env-C 602.04 establishes fines for violations relating to public notification. For failure to provide public notice as required by Env-Ws 350 through Env-Ws 359, a fine of \$1,000 per monitoring/reporting violation as defined in Env-Ws 351 is authorized.

E. SANITARY SURVEY

38. Env-Ws 306.1(b) requires that each transient, non-community water system be subject to a sanitary survey at least once every five years. The purpose of the sanitary survey is to conduct an on-site review in order to evaluate the adequacy of the sources, storage facilities, equipment, operation, and maintenance to produce and distribute safe drinking water.
39. Env-Ws 306.01(e) requires that significant operation or facility deficiencies be corrected within 90 days of the date of the sanitary survey.
40. On August 24, 2001, a sanitary survey was performed at the Water System by DES personnel. The September 5, 2001 survey report noted the following significant deficiency:
 - a. New Hampshire design standards require that all sources be capable of being sampled individually. Only in this way is it possible to monitor the water supply completely and to isolate pollution sources when necessary. A sampling tap on your source must be installed on the well's water line prior to the first on line pressure tank. The tap should be located at least 12 inches above the pump house floor.

41. The September 5, 2001 survey report required the Water System to correct the significant deficiencies within 90 days of the date of the inspection and notify DES in writing when the deficiencies have been corrected.

42. DES has no record of the requested written response to the significant deficiencies noted in the September 5, 2001 sanitary survey report.

43. Env-C 602.10 establishes fines for violations relating to public water systems. For failure to respond to a significant deficiency as required by Env-Ws 306.01 a fine of \$300 per calendar month that the deficiency is not corrected is authorized.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of April 1999 (federal fiscal year 1998 - 1999). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$100 (federal fiscal year 1998 - 1999).

2. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of May 1999 (federal fiscal year 1998 - 1999). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$200 (federal fiscal year 1998 - 1999).

3. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of July 2000 (federal fiscal year 1999 - 2000). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$100 (federal fiscal year 1999 - 2000).

4. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of May 2001 (federal fiscal year 2000 - 2001). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$100 (federal fiscal year 2000 - 2001).

5. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of June 2001 (federal fiscal year 2000 - 2001). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$200 (federal fiscal year 2000 - 2001).

6. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of July 2001 (federal fiscal year 2000 - 2001). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$200 (federal fiscal year 2000 - 2001).

7. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of April 2002 (federal fiscal year 2001 - 2002). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$100 (federal fiscal year 2001 - 2002).

8. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of May 2002 (federal fiscal year 2001 - 2002). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$200 (federal fiscal year 2001 - 2002).

9. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of June 2002 (federal fiscal year 2001 - 2002). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$200 (federal fiscal year 2001 - 2002).

10. Helen Tapley has violated NH Admin. Rule Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the system's scheduled month of July 2002 (federal fiscal year 2001 - 2002). Pursuant to Env-C 602.03(a), the Division is seeking a fine of \$200 (federal fiscal year 2001 - 2002).

11. Helen Tapley has violated NH Admin. Rule Env-Ws 326.30 by failing to submit a water sample for nitrate analysis in the second calendar quarter of 2002. 11. Pursuant to Env-C 602.03(b), the Division is seeking a fine of \$100.

12. Helen Tapley has violated Env-Ws 326.35 by failing to submit a water sample for nitrite analysis in the assigned second quarter of 2001 for the 2000 - 2002 compliance period. Pursuant to Env-C 602.03(b), the Division is seeking a fine of \$100.

13. Helen Tapley has violated NH Admin. Rule Env-Ws 351.01 by failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for total coliform bacteria in April 2002. Pursuant to Env-C 602.04(b), the Division is seeking a fine of \$1,000.

14. Helen Tapley has violated NH Admin. Rule Env-Ws 351.01 by failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for total coliform bacteria in May 2002. Pursuant to Env-C 602.04(b), the Division is seeking a fine of \$1,000.

15. Helen Tapley has violated NH Admin. Rule Env-Ws 351.01 by failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for total coliform bacteria in June 2002. Pursuant to Env-C 602.04(b), the Division is seeking a fine of \$1,000.

16. Helen Tapley has violated NH Admin. Rule Env-Ws 351.01 by failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for total coliform bacteria in July 2002. Pursuant to Env-C 602.04(b), the Division is seeking a fine of \$1,000.

17. Helen Tapley has violated NH Admin. Rule Env-Ws 351.01 by failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for nitrate and nitrite in the appropriate compliance period. Pursuant to Env-C 602.04(b), the

Division is seeking a fine of \$1,000.

18. The Water System has violated Env-Ws 306 by failing to correct the significant deficiencies as noted in the Sanitary Survey report of August 6, 2001 within ninety days of the inspection.

Pursuant to Env-C 602.10(e), the Division is seeking a fine of \$300.

The total fine being sought is \$7,100.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than November 11, 2002, using the enclosed form as follows:

1. If you plan to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to the DES Legal Unit, at the address as noted on the form.
2. If you choose to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If you wish to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If you wish to have a hearing but are unable to send an authorized representative to the hearing as scheduled, you must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify the DES Legal Unit in advance and do not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violation(s) and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case: The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
1. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
 2. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
 3. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.


IMPORTANT NOTICE

An administrative fine hearing that is scheduled is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

* * * * *

Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us/des). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.


COPY
Harry T. Stewart, P.E., Director
Water Division

Enclosure (*NHDES Fact Sheet #CO 2002*)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Stephen Tapley, Sampling Agent
Town of Greenland Board of Selectmen
Wallace Berg, Town of Greenland Health Officer
US EPA, Region 1

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HELEN TAPLEY IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.

PLEASE RESPOND NO LATER THAN NOVEMBER 11, 2002

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Helen Tapley,

I request to have a formal hearing scheduled in this matter.

I request to have a pre-hearing conference scheduled in this matter.

I would like to meet informally to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Helen Tapley.

I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$7,100 paid to "Treasurer, State of New Hampshire" is enclosed.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:

**Department of Environmental Services
Legal Unit
6 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095**

If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order